

# **Patna High Court**

**Jaideo Mahto**

**VS**

**The State Of Bihar & Ors**

**on 9 March, 2011**

**Author: S.K.Katriar**

**LETTERS PATENT APPEAL No.1812 OF 2010**

**\*\*\*\*\***

**Against the judgment and order dated 9.9.2010  
passed by a learned Single Judge of this Court in  
C.W.J.C. No.13476 of 2008.**

**\*\*\*\*\***

**JAIDEO MAHTO, son of Late Siya Mahto, resident of  
village- Sanjat, P.S.- Bhagwanpur, District-  
Begusarai at present posted and working as Block  
Education Extension Officer, in Shekhopur Sarai  
(Barbigha-2), District- Sheikhpura.**

**..... Petitioner...Appellant.**

**Versus**

**1. THE STATE OF BIHAR.**

**2. The State Information Commission, Fourth Floor,  
Suchna Bhawan, Bailey Road, Patna through its  
Registrar.**

**3. Sri P.N. Narayan, son of not known, the State  
Information Commissioner, Fourth Floor, Suchna  
Bhawan, Bailey Road, Patna.**

**4. The Deputy Secretary-cum-Joint Registrar, State  
Information Commission, Suchna Bhawan, Bailey  
Road, Patna.**

**5. The Director, Primary Education, New  
Secretariat, Patna.**

**6. The District Superintendent of Education,  
Sheikhpura.**

**7. Shashi Bhushan Kumar, son of Nand Kishore  
Prasad, resident of village- Baghi, P.S. Chakwai,  
District- Nawada.**

**.... Respondents.... Respondents.**

**\*\*\*\*\***

**For the Appellant: Mr. Devendra Kumar Sinha  
Senior Advocate with**

**Mr. Abhinay Raj, Advocate**

**For the State : Mr. Bhaskar Shankar Sah A.C. to  
G.P. 16.**

**For respondent nos.2 to 4: Mr. Lalit Kishore, Sr.  
Advocate with Ms. Binita Singh, Advocate**

**For respondent no.7: Mr. Devendra Prasad Singh  
with Mr. Kamlesh Kumar Sharma,**

**Advocates.**

**\*\*\*\*\***

**-----**

**PRESENT**

**THE HON'BLE MR. JUSTICE SUDHIR KUMAR  
KATRIAR THE HON'BLE MR. JUSTICE SAMARENDRA  
PRATAP SINGH**

**\*\*\*\*\***

S.K. Katriar, J. This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna has been preferred by the petitioner of C.W.J.C. No.13476 of 2008 (Jaideo Mahto vs. The State of Bihar and other), and raises a grievance with respect to the judgment dated 9.9.2010, passed by a learned Single Judge of this Court, whereby the writ petition has been disposed of, and the impugned orders passed by Mr. P.N. Narayanan, the learned State Information Commissioner, Patna, in Case No.3063 of 2007-08 (Shashi Bhushan Kumar vs. District Superintendent of Education- cum- Public Information Officer, Nawada), imposing fine on the appellant, has been upheld.

2. A brief statement of facts essential for the disposal of this appeal may be indicated. Selection process for appointment of block teachers for different blocks in the district of Nawada were conducted by a committee comprising

of the Pramukh of the Panchayat as Chairman, the Block Education Extension Officer, Block Development Officer-cum- Ex-officio Secretary of the Panchayat, and member of the concerned Panchayat Samiti. A total number of 55 block teachers were to be appointed in the district of Nawada, and certain posts were reserved for visually impaired persons. We are concerned with the Shekhopur Sarai Block, and one post for a visually impaired person was reserved in this block. The appellant herein (writ petitioner), at the relevant point of time, was posted as the Block Education Extension Officer, Shekhopur Sarai Block. Shashi Bhushan Kumar (respondent no.7 herein), Narain Prasad Singh, and Arvind Kumar were the three applicants who claimed consideration in the reserved category of visually impaired person. Shashi Bhushan Kumar (respondent no.7 herein) is the information-seeker and the applicant before the State Information Commission (hereinafter referred to as „the Commission). After completion of the selection process, Narayan Prasad Singh was selected in this reserved category and was issued appointment letter dated 7.2.2007.

2.1) Shashi Bhushan Kumar claimed to be visually impaired to the extent of 100% and felt aggrieved by the selection process. According to him, Narayan Prasad Singh was visually impaired to a much lesser extent. Instead of approaching the Information Officer, Shashi Bhushan Kumar (respondent no.7 herein) approached the Commission directly under the provisions of Section 19 of the Right to Information Act 2005 (hereinafter referred to as „the Act“). He has filed appeal before the Commission on 14.7.2007, which was laid before the Commission for the first time on 1.11.2007.

2.2) It is relevant to state that the appellant before the Commission had sought various informations about the selection process with respect to all the blocks of the district of Nawada. By order dated 1.11.2007, the

Commission directed the Superintendent of Education-cum- Public Information Officer, Nawada, to provide the informations sought for in the memo of appeal before the Commission within the time granted by that order. The Commission had also indicated therein that, in the event of refusal to supply the requisite informations, penalty in the manner stated therein shall be imposed on the said functionary. The matter was thereafter taken up on various occasions by the Commission and it ensured supply of informations by the District Superintendent of Education, or the Block Education Extension Officer of different blocks. The informations were supplied by most of them. We are, however, concerned only with the appellant's case who, as stated hereinabove, was at the relevant point of time posted as a Block Education Extension Officer, Shekhopur Sarai Block. The Commission had passed various orders against the appellant herein and has imposed penalty at multiple stages because, in the opinion of the Commission, the requisite informations have not been supplied by him. It also appears from the order dated 12.2. 2008, that the Commission had entertained a fresh application in the nature of a supplementary application from the appellant before it to provide further information over and above the information sought for in the initial memo of appeal. The cumulative effect of the orders is that the Commission has imposed penalty totalling a sum of Rs.25,000/- (rupees twenty-five thousand) on the appellant for non-supply, or "feF;kiw.kZ" supply, of informations to the applicant before it.

2.3) Aggrieved by the order of the Commission, the appellant preferred the writ petition which has been dismissed, leading to the present appeal.

3. While assailing the validity of the impugned proceedings of the Commission, learned counsel for the appellant submits that the Commission has failed to keep in mind the limits of its jurisdiction under the Act, and has passed orders which are beyond the scope of the Act.

4. Learned counsel for respondent nos.2 to 4 has supported the impugned action of the Commission and has tried to establish that the requisite informations were not supplied by the appellant.

5. Learned counsel for respondent no.7 has also supported the action of the Commission.

6. We have perused the materials on record and considered the submissions of learned counsel for the parties. As stated hereinabove, the proceeding commenced with the order dated 1.11.2002, whereby direction was issued to the District Superintendent of Education-cum-Public Information Officer, Nawada, to provide the requisite informations. The order also stated in anticipation as to why penalty be not imposed in the event of non-compliance of the order. The entire order-sheet of the Commission is before us and it appears to us that the Commission actively pursued the matter as a result of which the Information Officers of different blocks substantially or partially supplied the informations. The Commission felt that the appellant, being the Block Education Extension Officer- cum- Information Officer, Shekhopur Sarai Block, has not supplied the requisite informations and as such determined the penalty against the appellant at various stages. We are not detaining ourselves to examine the legality of the Commission's approach in entertaining the appeal without there being an application before the Information Officer or an appeal before the departmental authority. In other words, the Commission entertained something in the nature of second appeal without there being a suit or a first appeal. We shall examine the legality or otherwise of such an approach on the part of the Commission in an appropriate case in future. The Commission was not right in passing order in anticipation about the proposed penalty, and should have acted with restraint, in a situation where the appellant did not have the opportunity to supply informations at an earlier stage. The question of

penalty would arise only after the Information Officer fails to supply the information sought for, particularly when the appellant before the Commission had neither filed application before the Information Officer nor had preferred the departmental appeal.

7. It appears to us that the State Information Commissioner by his approach acted beyond the scope, spirit, and the limits of his jurisdiction conferred on him by the Act. We have in our recent judgment dated 20.01.2011, passed in L.P.A. No. 102 of 2010 (Saiyed Hussain Abbas Rizwi Vs. The State Information Commission & Ors), held that, in the scheme of the Act, supply of information sought for is a matter of right, has got to be supplied, except the informations prohibited by the Act. The Commission, therefore, ought to have confined itself to supply of informations sought for by the applicants as really obtaining in the records of the concerned office. It is apparent from a perusal of the order-sheet of the Commission that, instead of confining itself to the limits of jurisdiction under the Act, it directed the appellant to provide informations which may have a bearing on the correctness and the validity of the selection process, which is patently beyond his jurisdiction. The Commission is hereby reminded that it is a statutory authority and its powers, duties, functions, and jurisdiction is confined within the four-corners of the statute which has created it. It has no plenary power, and cannot in the least travel beyond the terms of the enactment.

8. The Commission by its illegal action has outrageously exceeded its jurisdiction and has passed orders which may have a bearing on the validity or correctness of the selection process. For example, it is evident from the order dated 19.03.2008 that it had directed the appellant herein to provide the certificate furnished by the candidates in the proforma prescribed by the State Government. This is compelling the appellant to provide information which was not on record. The Commission could and should have directed

that the medical certificate showing the extent of visual impairment with respect to that candidate as obtaining in the records has to be supplied even if the same were not in the prescribed proforma. There could not have been an order to do so in the prescribed proforma if not filed originally. We reproduce hereinbelow the relevant portion of the order dated 19.03.2008:

"...iz[akM f'k{k izlkj inkf/kdkjh] "ks[kksiqjljk; us vkosnd dks lwpuk nh gSA ysfdu nh x;h lwpuk esa ljdkj ls fu/kkZfjr fodykaxrk izek.k&i= "kkfey ugh gSA viw.kZ lwpuk nsus ds QyLo#i fn0 16&1&08 ds izHkko ls vkt fn0 19&3&08 rd 8000 #0 dk vkfFkZd naM yxk;k tkrk gSA os funsf"kr gSa fd ljdkj ls fu/kkZfjr #i esa fodykaxrk izek.k&i= dh izfr vkosnd dks 2&5&08 rd nsdj vk;ksx dks lwfpr djsa] vU;Fkk vkosnd dks ;g lwfpr djsa fd p;fur mEehnokj ls ljdkj ls fufgr #i esa fodykaxrk izek.k&i= ugha fy;k x;k gSA muds mRrj ds vk/kkj ij /kkjk 20(2) ds rgr dkjZokbZ ij fopkj fd;k tk,xkA vkt ds vkns"kkuqlkj lwpuk ugh fn, tkus ij 20&3&08 ds izHkko ls Hkh vkfFkZd naM izHkkoh jgsxkA vxyh lwuokbZ fn0 12&5&08 ds iwokZg~u 10&30 cts gksxhA"

8.1) The Commission made a similar error in its order dated 12.05.2008, and the relevant portion of which is reproduced hereinbelow:

"vkosnd mifLFkrA ftyk f'k{k izlkj inkf/kdkjh] "ks[kksiqjljk; mifLFkrA mUgksaus vk;ksx ds fnukad&19&3&08 ds vkns"kkuqlkj p;fur mEehnokj dk fu/kkZfjr izi= esa fodykaxrk izek.k&i= dh izfr ugh nh vkSj u gh fu/kkZfjr izi= esa p;fur mEehnokj dk fodykaxrk izek.k&i= ugh fy, tkus dh lwpuk nh gSA os funsf"kr gSa fd vkosnd dks bl fcUnw ij lgh lwpuk fnukad 4&7&08 ;k mlds iwoZ nsdj vk;sx dks Hkh lwfpr djsaA vk;ksx ds vkns"k ds mYya?ku ds dkj.k iz[kaM f'k{k izlkj inkf/kdkjh] "ks[kksiqjljk; ij fnukad 13&3&08 ds izHkko ls vkt fnukad 12&5&08 rd 23000#0 (rsbZI gtkj #i;s) vkfFkZad naM fu/kkZfjr fd;k tkrk gSA vkosnd dks bl vkns"k ds vuqlkj Li'V ,oa lgh lwpuk nsdj ekuus ;ksX; Li'Vhdjk.k fn;s tkus ij vxyh lquokbZ ds nkSjku bl vkfFkZd naMkns'k ij fopkj fd;k tk ldrk gSA "



8.2) We also reproduce hereinbelow the whole of the order dated 07.07.2008, which is replete with such illegal directions: "vkosnd mifLFkrA Jh t;nso egrks] iz[kaM f"k{kk izlkj inkf/kdkjh] "ks[kksiqjljk; us p;fur mEehnokjksa ls tks fodykaxrk izek.k&i= fy;k gS og ljdkj n~okjk funsf"kr izk#i ,oa izfdz;kRed ugha gSA bls dze esa feF;kiw.kZ lwpuk nsus gsrq fn0 12&5&08 dh lquokbZ ds nkSjku muij 23000 #0 dk vkfFkZd naM fu/kkZfjr fd;k x;k FkkA os funsf"kr Fksa fd ;Fkk izfdz;kRed fy, x, fodykaxrk izek.k&i= dh izfr ;k fodykaxrk izek.k&i= ljdkj ls fu/kkZfjr izfdz;k ds vuqlkj ugh fy, tkus dh lgh lwpuk vkosnd dks fn, tkus ij vkfFkZd naM ij fopkj fd;k tk ldrk gSA mUgksaus nksuksa ugh dj vius mRrj dks nqgjk;k gSA fn0 12&5&08 dks fu/kkZfjr vkfFkZd naM dks vf/kdre vkfFkZd naM ;kuh 25000#0 fu/kkZfjr djrsa gq, vk;ksx ds lfpo dks funsf"kr fd;k tkrk gS fd lacaf/kr ys[kk "kh'kZ esa vkfFkZd naM dks tek djkus gsrq vkxs dh dkjZokbZ djsaA /kkjk 19 (\*8) (d) esa nh x;h "kfDr;ksa dks vf/kfu;e ds izLrkouk ds lkFk i<+rs gq, iz[kaM f"k{kk izlkj inkf/kdkjh] "ks[kksiqjljk; n~okjk fd, x, dk;Z esa Hkz'Vkpkj ds vk"kadk dkj.k vk;ksx funs"kd (izk0 f"k0)] ekuo lalk/ku fodkl foHkkx dks funsf"kr djrh gS fd iz[kaM f"k{kk izlkj inkf/kdkjh] "ks[kksiqjljk; n~okjk Jh ukjk;.k izlkn flag (n`'V fodykax) ds vkosnu ds dze esa fy, x, fodykaxrk izek.k&i= ,oa ml fu;qfDr ds lanHkZ esa vU; vkosndksa ds nkos ds ckjs esa tkap dj ;fn vko";drk gks] c`gr~ naM gsrq Jh t;nso egrks] iz[kaM f"k{kk izlkj inkf/kdkjh] "ks[kksiqjljk; ds fo#) fu;ekuqlkj dkjZokbZ djsaA bl vkns"k ds rgr d`r dkjZokbZ ls vk;ksx dks fn0 31&10&08 ;k mlds iwoZ lwfpr djsaA Jh y{eh ukjk;.k flag] iz[kaM f"k{kk izlkj inkf/kdkjh] dkSvkdkSy mifLFkrA mUgksaus vkosnd dks vHkh rd lwpuk ugh nh gSA vk;ksx ds le{k mUgksaus dgk gS fd fn0 18&2&08 ds izHkko gh os fuyafcr gks x, gS rFkk mudk eq[;ky; {ks=h; mifuns"kd] x;k ds dk;kZy; esa j[kk x;k gSA vk;ksx ds fn0 1&11&07 ds vkns"kkuqlkj fn0 1&11&07 ds izHkko ls fn0 17&2&08 rd iz[kaM f"k{kk izlkj inkf/kdkjh ij fn0 12&5&08 dks fu/kkZfjr 23000#0 ds vkfFkZd naM dks c<+kdj 25000#0 dk vkfFkZd naM fu/kkZfjr fd;k tkrk gSA

vk;ksx ds lfpo funsf"kr gSa fd bl vkns"k ds vuqikyu esa ys[kk "kh'kZ ds v/khu vkfFkZd naM dks tek djkus gsrq vkxs dh dkjZokbZ djsaA

Jh "kf"khkw'k.k dgekj n`f'V fodykax ds fu;kstu gsrq fn, x, vkosnu ds ifjizs{; esa funs"kd (izk0 f"k0) funsf"kr gSa fd "ks[kksiqjlk; esa fd, x, fu;kstu ds ckjs esa funsf"kr tkap ds nkSjku dkSvkdkSy esa fd, x, fu;kstu dk Hkh tkWap djka,A ifj.kke ds vk/kkj ij vko";d gks] iz[kam f"k{kk izlkj inkf/kdkjh] dkSvkdkSy ij c`gr~ naM gsrq vko";d dkjZokbZ dj fn0 21&10&08 ;k mlds iwoZ vk;ksx dks lwfpr djsaA ekeys dh vxyh lquokbZ fn0 31&10&08 ds iwokZg~u 10&30 cts gksxhA"

9. The strident approach of the Commission had the most undesirable effect of terrorizing the appellant into subservience, and the materials on records suggests that the Civil Surgeon constituted a medical board to examine the extent of visual impairment of the concerned candidate(s). It will bear repetition to state that the authorities under the Act are vested with the power to ensure supply of information sought for as obtaining on the records, rather than the ideal or the legal state of affairs. We are mindful of the position that the selection process to the extent relevant in the present context concerns visually impaired persons. The appellant before the Commission (respondent no.7 herein), was desirous of obtaining information as to the extent of impairment of the various candidates in this reserved category, and the basis of selection of Narayan Prasad Singh in a situation where he (respondent no.7 herein) was visually impaired to the extent of 100%. Respondent no.7 could not have and rightly did not raise issues relating to the validity of the selection process. But the Commission illegally took upon itself the task of injecting validity to the selection process. Instead of ensuring supply of factual position, he has gone to the length of directing the Director, Primary Education, to ensure action against the erring official.

Such an approach is wholly beyond the jurisdiction of the Commission, being an authority of limited jurisdiction.

10. We tried to ascertain for ourselves as to the extent of information required by respondent no.7, and the extent to which the informations were supplied. Respondent no.7 herein had not entered appearance in the writ proceedings and did not file counter affidavit. He has also not filed any affidavit in the present proceedings. During the course of submissions on 8.3.2011, we had called upon the learned counsel for respondent no.7 to furnish to us in tabular form the aforesaid informations which he has not supplied. In such a situation, we are unable to finally conclude the matter, we are constrained to remit the matter to the Commission.

11. In the result, this appeal as well as the writ petition are allowed, and the order dated 16.1.2008, whereby the Commission had for the first time imposed the penalty on the appellant, and all the subsequent orders, are hereby set aside. The matter is remitted for a fresh decision in accordance with law. In order to expedite the matter, let learned counsel for the parties appear before the Commission on 4.4.2011 as the first date on which the parties personally or through their counsel shall appear. Thereafter the proceeding shall continue as per the orders of the Commission. This Court will be pleased if the Commission concludes the proceedings within a period of four months commencing 4.4.2011.

12. Let copies of this judgment be handed over to the learned counsel for the parties.

(S.K. Katriar, J.)

S.P. Singh, J. I agree.

(S.P. Singh, J.)

Patna High Court, Patna

Dated the 9th day of March, 2011.

S.K.Pathak/Uday/ (AFR)